

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7
BKY 18-50378 (WJF)

ERP Iron Ore, LLC,

Debtor.

**NOTICE OF HEARING AND MOTION FOR TURNOVER OF PROPERTY OF THE
ESTATE AND MEMORANDUM OF LAW**

TO: The debtor and other entities specified in Local Rule 9013-3(a)(1):

1. Nauni J. Manty, the chapter 7 trustee of the bankruptcy estate of ERP Iron Ore, LLC, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at **2:30 p.m. on Wednesday, October 9, 2019**, before the Honorable William J. Fisher, in Courtroom 2B, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and served not later than **Friday, October 4, 2019**, which is five days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1134, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This case was commenced by the filing of an involuntary petition for relief under chapter 7 on May 25, 2018. On July 16, 2018, the debtor consented to relief under the bankruptcy code. On July 17, 2018, the court ordered relief and on that same day, the debtor voluntarily converted the case to a case under chapter 11. The case was converted to a case under chapter 7 on December 1, 2018. Nauni J. Manty

was appointed as the chapter 7 trustee on December 3, 2018. This case is now pending in this court.

5. This motion arises under 11 U.S.C. § 541(a) and 542(e). This motion is filed under Fed. R. Bankr. P. 9014 and 9019 and Local Rules 9006-1 and 9013-1 to 9013-3. The trustee requests relief with respect to turnover of all of the debtor's books and records, including electronic data.

6. According to the debtor's schedules, the books and records of the debtor are in the possession of Dean Menge and Jade Martire. [Doc. No. 118 at p. 7]. In addition, the schedules suggest that Jennifer Bell and Erin Deacon may have possession of the debtor's books and records. *Id.* Mr. Menge was the CFO of the debtor. *Id.* at p. 8. Ms. Bell was a director and secretary of the debtor. *Id.* at p. 7.

7. The trustee has attempted to obtain the books and records of the debtor, but to date, they have not been turned over to her. The trustee must have the books and records of the debtor to administer the estate. This includes, but is not limited to, pursuing claims against Thomas Clarke, the principal of the debtor, Ana Clarke and Merida Natural Resources, LLC in adversary proceeding 18-05045, which is currently pending. The trustee, through counsel, has requested certain of the debtor's books and records during discovery in the adversary proceeding, but to date, not one document has been provided.

MEMORANDUM OF LAW

11 U.S.C. §541(a)(1) provides that:

- (a) The commencement of a case under § 301, 302 or 303 of this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of this case.

11 U.S.C. § 542(e) provides that “after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor’s property or financial affairs, to turn over or disclose such recorded information to the trustee.” *Also see* 11 U.S.C. §521(a)(4) (requiring the debtor to “surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate.”).

Here, the debtor’s books and records are estate property. It is imperative for the trustee to have the debtor’s books and records to administer the estate. This includes pursuing avoidance actions, such as the adversary proceeding pending against Mr. Clarke, Ms. Clarke and Merida Natural Resources.

WHEREFORE, the trustee requests an order requiring Dean Menge, Jade Martire, Jennifer Bell and Erin Deacon to turnover all books and records of the debtor, including electronic data within five days of the date of the order.

Dated: September 25, 2019

MANTY & ASSOCIATES, P.A.

/e/ Jacqueline J. Williams

Nauni Jo Manty (#230352)

Jacqueline J. Williams (#386611)

401 Second Avenue North, Suite 400

Minneapolis, MN 55401

Phone: (612) 465-0990

Fax: (612) 746-0310

Email: jwilliams@mantylaw.com

Attorneys for the Trustee

VERIFICATION

I, Nauni J. Manty, the chapter 7 trustee named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 25, 2019



Nauni J. Manty, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: BKY 18-50378 (WJF)
Chapter 7
ERP Iron Ore, LLC,
Debtor.

UNSWORN CERTIFICATE OF SERVICE

I declare under the penalty of perjury that on September 25, 2019, I caused the following documents: **Notice of Hearing and Motion for Turnover of Property of the Estate and Memorandum of Law, Verification, (proposed) Order and this Unsworn Certificate of Service** to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the ECF participants.

I further declare that I mailed copies of the foregoing **Notice of Hearing and Motion for Turnover of Property of the Estate and Memorandum of Law, Verification, (proposed) Order and this Unsworn Certificate of Service** by U.S. Mail postage prepaid to the parties named below at the addresses stated below:

ERP Iron Ore, LLC
7908 US Highway 169, Suite B
Bovey, MN 55709

Christopher D. Anderson
Allete, Inc. d/b/a Minnesota Power
30 West Superior Street
Duluth, MN 55802

Laura E. Appleby
Chapman and Cutler LLP
1270 Avenue of the Americas
New York, NY 10020
*Attorneys for Interested Party Ad Hoc
Committee of PIK Toggle Noteholders*

Donna Culver
Morris, Nichols, Arsht & Tunnell, LLP
1201 North Market Street
Wilmington, DE 19899
Attorneys for Weir Minerals Netherlands B.V.

Michael Friedman
Chapman and Cutler LLP
1270 Avenue of the Americas
New York, NY 10020
*Attorneys for Interested Party Ad Hoc
Committee of PIK Toggle Noteholders*

Thomas A. Labuda, Jr.
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
Attorneys for Jefferies, LLC

Lamey Law Firm PA
980 Inwood Ave N
Oakdale, MN 55128
Attorneys for Weir Minerals Netherlands B.V.

Matthew E. Linder
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
Attorneys for Jefferies, LLC

Ian T Peck
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Attorneys for BNSF Railway Company

Jeremy B Reckmeyer
Hunton Andrews Kurth LLP
450 Lexington Ave, 15th Floor
New York, NY 10017
Attorneys for Liquidity Solutions, Inc.

Timothy Daniel Reynolds
Jones Day
901 Lakeside Avenue
Cleveland, OH 44114-1190
Attorneys for Cleveland-Cliffs Inc.

Paul N Silverstein
Hunton Andrews Kurth LLP
450 Lexington Ave, 15th Floor
New York, NY 10017
Attorneys for Liquidity Solutions, Inc

Thomas M Wearsch
Jones Day
901 Lakeside Avenue
Cleveland, OH 44114-1190
Attorneys for Cleveland-Cliffs, Inc.

Lee Woodard
Harris Beach PLLC
333 West Washington, Suite 200
Syracuse, NY 13202
Attorneys for Sompco International Insurance

Dean M. Menge
679 6th Avenue
Calumet, MN 55716

Steven Wilamowsky
Chapman and Cutler LLP
1270 Avenue of the Americas
New York, NY 10020
*Attorneys for Interested Party Ad Hoc
Committee of PIK Toggle Noteholders*

Dean M. Menge
P.O. Box 246
Calumet, MN 55716

Jennifer Bell
15 Appledore Lane
Natural Bridge, VA 24578

Jade Martire
113 4th Street
Nashwauk, MN 55769

Jennifer Bell
P.O. Box 87
Natural Bridge, VA 24578

Erin Deacon
15 Appledore Lane
Natural Bridge, VA 24578

Erin Deacon
P.O. Box 87
Natural Bridge, VA 24578

Executed on: September 25, 2019

/e/ Kevin Carnahan
Kevin Carnahan, Legal Assistant
Manty & Associates, P.A.
401 Second Avenue North, Suite 400
Minneapolis, MN 55401
Telephone: 612-465-0990

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7
BKY 18-50378 (WJF)

ERP Iron Ore, LLC,

Debtor.

ORDER FOR TURNOVER

This matter came before the court on the motion of Nauni J. Manty, the chapter 7 trustee of the bankruptcy estate of ERP Iron Ore, LLC, for an order for turnover. Based upon all of the files, records and proceedings herein,

IT IS HEREBY ORDERED:

Dean Menge, Jade Martire, Jennifer Bell and Erin Deacon shall turnover all books and records of the debtor, including electronic data, within five days of the date of the order.

Dated:

William J. Fisher
United States Bankruptcy Judge